SB CIVIL MISC. APPEAL NO. 104/1995
(RSRTC v VIJAY KUMAR)

HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER: 21.8.06

Mr. Virendra Agarwal for the appellant.
Mr. D.V. Tholia for the respondent.

The appellant has challenged the award dated 5.12.94 whereby the claim petition filed by the appellant has been dismissed.

The brief facts of the case are that on 22.3.83 Gaush Mohammad, PW 5, was driving a RSRTC Bus from Ramgarh to Jhunjhunu, when the bus reached beyond crasher machine after the Jhunjhunu Bus Stand, a truck bearing registration No. RJP 4120, loaded with stones, tried to overtake the bus from the right hand side and hit the bus. Consequently the bus driver lost control of the bus and the bus dashed against a stone bridge. Since the bus was damaged in the said accident, the RSRTC filed a claim petition for compensation of Rs. 43,078.80/-. The respondent No.1, who is the driver and the owner of the said bus, submitted his written statement and denied occurrence altogether. According to him the bus had crashed against the bridge, but not because of any fault of his, but because of the fault of, PW 5, Gaush Mohammad. On the basis of

the pleadings, the learned Tribunal framed six issues. However, eventually it came to the conclusion that both the driver Gaush Mohammad and Vijay Kumar were responsible for the accident. Therefore, the learned Tribunal dismissed the claim petition. Hence, this appeal before this Court.

Mr. Virendra Agrawal, learned counsel for the appellant, has vehemently argued that the finding of the learned Tribunal is against the overwhelming evidence available on the record. According to the MTO Report, Ex. P.38, it was clearly stated that the left side of the truck was damaged and the right side of the bus was equally damaged. This clearly shows that both the vehicles had collided while the truck was trying to overtake the bus. The said report also corroborates the statement of P.W. 5 Gaush Mohammad and, P.W. 1, Mahendra Kumar Sharma. The learned counsel has also argued that once both the vehicles had struck against each other, by sheer impact, the bus driver lost control and dashed the bus against the bridge. Therefore, the dashing against the bridge was the effect of the truck which collided with the bus. Hence, the fault cannot be placed on the shoulder of the bus driver. The fault squarely lies on the respondent No.1. He has further argued that the appellant is

entitled to claim damages for non-availability of the vehicle while the vehicle was under repair. In order to support his contention he has relied upon the case of G. M.D. Masoom Vs. S.K. Kedar Wali & Anr. (2005 ACJ 1802 (A.P.)).

On the other hand, Mr. D.V. Tholia, the learned counsel for the respondent has strenuously argued that no independent witnesses were produced by the appellant. Secondly, that the persons who repaired the bus have not been examined. Thirdly, that the MTO report is not a detailed one, therefore, it cannot be relied upon. Lastly, he has argued that the learned Tribunal has rightly concluded that it is a case of contributory negligence of both the sides. Hence, he has supported the award.

We have heard the learned counsels for both the parties and have perused the impugned award and the record which is before this Court.

According to Ex. 37, the mechanical report of the truck, on the left door of the truck there are signs of scraping. Similarly the mudguard is bent from the left side of the truck. According to Ex. 38, the bus is damaged on the right side. Both these documents support

the testimony of PW 1 Mahendra Kumar, who stated “that the truck came from behind and hit the bus on the right side of the bus because of which the bus hit the wall of the bridge and dangled.” Similar is the statement of, PW 5, Gaush Mohammad. Thus, both these witnesses are corroborated by Ex. 37 and 38. Since the damage is on the left side of the truck and on the right side of the bus, obviously both the vehicles collided while the truck was trying to overtake the bus from the right side. According to the witnesses, the bus was moving slowly, it was the truck which was speeding. Therefore, the negligence is of the truck driver and not of the bus driver. The learned Tribunal has made a curious observation that it was the duty of the bus driver not to loose control of the bus. This observation clearly shows a lack of understanding of cause and effect. Because of the force of high moving vehicle, a vehicle which is being driven slowly is bound to be deflected by the sheer impact. The fact that the bus collided against the stone bridge is the effect of the collusion between the two vehicles.Thus, the bus driver cannot be blamed for having lost control of the bus. Therefore, the cause of the accident is clearly rash and negligent driving of the truck driver. In the claim petition, the appellant had sought a claim of Rs. 43,078.80/-.

Since the negligence is clearly that of the truck driver and not of the bus driver, this Court is inclined to quash and set aside the award dated 5.12.94 and to direct the respondent no.1 to make a payment of Rs. 40,000/- to the appellant alongwith an interest @ 6% per annum from the date of filing of this appeal i.e. 9.1.1995 till the payment within a period of two months. The respondent is directed to deposit the said amount with the learned Tribunal. Upon receiving the said amount, the learned Tribunal is directed to issue notice to the appellant and to disburse the compensation amount within a period of one month thereafter. Hence this appeal stands allowed.

(R.S. CHAUHAN) J.

MRG.